



Office of the Governor
Office of Consumer Affairs
CONSUMERS' UTILITY COUNSEL DIVISION

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MAR 27 1998

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March 26, 1998

BY OVERNIGHT MAIL

Office of the Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, D.C. 20554

Re: Telecommunications Carriers' Use of Customer Proprietary Network Information
and Other Customer Information, CC Docket No. 96-115; Comments to NPRM

Dear Sir or Madam:

Enclosed are an original and eleven (11) copies of our Comments to the NPRM. We have provided copies of this document to the Common Carrier Bureau and International Transcription Services, Inc. If anything further is needed, I may be reached at (404) 656-3959.

Yours truly,

Kennard B. Woods
Staff Attorney

cc: Ms. Janice Myles, Common Carrier Bureau, Room 544 (1 copy)
International Transcription Services, Inc. (1 copy)

/KBW

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAR 27 1998

In the Matter of

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**Telecommunications Carriers' Use
of Customer Proprietary Network
Information and Other Customer
Information**

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CC Docket No. 96-115

**COMMENTS OF CONSUMERS' UTILITY COUNSEL DIVISION, (GEORGIA)
GOVERNOR'S OFFICE OF CONSUMER AFFAIRS, REGARDING FURTHER
NOTICE OF PROPOSED RULEMAKING**

The Consumers' Utility Counsel Division of the (Georgia) Governor's Office of Consumer Affairs ("CUCD") was created by an Act of the Georgia General Assembly in 1975 in order to represent and act as a special advocate for the interests of Georgia's residential consumer and small business utility ratepayers in proceedings before state and federal administrative bodies and the courts. Official Code of Georgia Annotated ("O.C.G.A."), section 46-10-1, et seq. Many states, including Georgia, have been leaders in enacting and implementing competition in local telephony, and have a keen understanding of and experience dealing with local conditions. In 1995, Georgia enacted its own Telecommunications and Competition Development Act, O.C.G.A. 46-5-160 et seq., and has proceeded to open the local exchange market to competition.

CUCD offers its comments concerning the Further Notice of Proposed Rulemaking ("NPRM"), released February 26, 1998, as part of its Second Report and Order, FCC 98-27, issued in this proceeding (hereinafter referred to as "FCC 98-27"). In the NPRM, the Commission seeks comment on the following issues: 1) the customer's right to restrict his or her

carrier's use of Customer Proprietary Network Information ("CPNI") for that carrier's marketing purposes; and 2) protections for carrier information and enforcement mechanisms.

SUMMARY OF ARGUMENTS

Congress intended that consumers have the right to forbid use of their personal CPNI for any and all uses other than those specifically recognized as "exceptions" in section 222 (d) of the Telecommunications Act of 1996.

The protections of CPNI imposed by the Commission on carriers should be expanded, particularly with respect to the sharing of customer records between incumbent local exchange carriers and their competitors.

I. CONSUMERS HAVE A RIGHT TO RESTRICT ALL MARKETING USES OF CPNI

Individually identifiable CPNI - i.e., CPNI personal to a consumer - consists of information typically found in a customer's phone bills: the features and services used, the rates and charges for those items, call origination and destination, who was called and when they were called. The Commission has concluded that a customer's carrier may use the customer's individually identifiable CPNI, without that customer's approval, to market offerings to him or her that are related to, but limited by, the customer's existing service relationship with that carrier (paragraph 4, FCC 98-27). The Commission also concluded that, before the customer's carrier may use such CPNI to market service outside the customer's existing service relationship, express carrier approval is necessary (Id.). Thus a local exchange carrier cannot use its customer's local service CPNI to market long distance offerings to him or her, absent the customer's approval, but generally may use that CPNI to market offerings related to local service

without the customer's approval (paragraph 27; see paragraphs 35, 65, id.). The Commission also ordered carriers to provide a one-time notification of customers' CPNI rights prior to any solicitation needing customer approval.

The NPRM concerns whether a customer has the right to restrict the use of any and all of his or her individually identifiable CPNI, except for those instances listed in section 222 (d) of the Telecommunications Act of 1996. Section 222 (d) lists those "exceptions" in which a carrier has an "absolute" right to use CPNI: for billing and collection purposes; to protect the carrier's rights and property or to protect users from fraudulent or illegal activity; and to provide information to the customer when he or she calls the carrier and "the customer approves of the use of such information to provide such service". Thus the Commission concluded that section 222 (c) (1) (A) and (B), as well as the exceptions in section 222 (d), are the only instances in which customer approval is not required for a carrier to use, disclose or permit access to individually identifiable CPNI (paragraph 23, id.).

As the Commission observes, Section 222 of the Telecommunications Act of 1996 is silent as to whether a customer has the right to restrict his or her telecommunications carrier from using, disclosing or permitting access to his or her individually identifiable CPNI within the circumstances defined by subsections 222 (c) (1) (A) and (B); i.e., when the customer's carrier is providing "the telecommunications service from which such information is derived," or for "services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories." The Commission thus concluded that personal CPNI may be used without a customer's approval, by that customer's carrier, so long as the carrier is marketing a related service offering to that customer. But the statute does not mention that the customer has

the right to forbid even that "limited" use of CPNI. This is so because it has always been assumed that customers have the right to refuse the use of CPNI for marketing purposes generally. Like utility service generally, telephone service is ubiquitous because it is universally regarded as a necessity, with or without competition in local exchange markets. Telephone service, however, implicates privacy issues far more than other types of utility service, and to a far greater extent than consumer services generally, with the only exception being, perhaps, credit or loan services. Because telephone service is universal, consumers should enjoy greater, not lesser, privacy with respect to their personal calling information. Hence Congress recognized that, given the explosion in telemarketing that may occur in the wake of the Telecommunications Act of 1996, customers must have the right to restrict access to their private lives to those intrusions necessary to maintain such telephone services as they, and not corporations, deem necessary.

The research regarding consumer attitudes toward privacy clearly demonstrates that the public feels it should be empowered to deal with the increasing lack of privacy. Eighty-seven percent (87%) of consumers believe protecting privacy is "very" or "somewhat important" to them (p. 27, Harris-Equifax Consumer Privacy Survey, 1996). The public is increasingly concerned about how the private sector uses and circulates personal information about consumers (p. 16, Harris-Equifax Consumer Privacy Survey, 1992). About seventy percent (70%) of Americans - a "dramatically" increasing number - agree that the "present uses of computers are an actual threat to personal privacy." (p. 17, id.). About two-thirds of Americans do not agree that "in general, the privacy of personal information in computers is adequately safeguarded." (p. 18, id.). Sixty-seven percent (67%) of consumers believe that use of computers should be

sharply restricted (p. 20, id.). Only five percent (5%) and four percent (4%) of consumers, respectively, are "very confident" that companies that offer products or services through the mail or by telephone will handle personal and confidential information in a proper manner, and forty-seven percent (47%) and fifty-four percent (54%), respectively, say that they are "not at all" confident that such information will be handled properly by mail and telephone solicitors (p. 6, Harris-Equifax Consumer Privacy Survey, 1994). Such attitudes, perhaps surprisingly, are reportedly based on actual experience rather than media reports (p. 29, Harris-Equifax Consumer Privacy Survey, 1996). Such attitudes should be respected, not dismissed, in the Commission's deliberations.

The Commission recognized that, to the extent CPNI is property, "it is better understood as belonging to the customer, not the carrier" (paragraph 43, FCC 98-27). CPNI contains "highly personal information" (paragraphs 19, 61, id.), of a type only slightly (if at all) less sensitive than general credit information. The U.S. West study, which the Commission notes, found that of those consumers even willing to listen (i.e., those that did not immediately hang up) to a request for approval of use of their CPNI for additional product offerings and "bundlings" with existing service, the majority did not approve the carrier's use of their CPNI (paragraph 99, id.). The Commission found that an "equally plausible interpretation of these results", besides indicating an aversion to telemarketing in generally, "is that they suggest that many customers value the privacy of their personal information. . . ." (paragraph 100, id.). Thus it would be inconsistent for the Commission to decide that consumers do not have the right to restrict access to their personal calling information.

The Telecommunications Act of 1996 indicates Congress' intent to protect consumers from telemarketing abuses that are inevitable in the wake of "deregulation." Section 222 (a) of the Telecommunications Act charges carriers with the duty to "protect the confidentiality of proprietary information." The term "proprietary information" is broader than the term "customer network proprietary information," and includes all information that is part of customer service records, including credit information. The Commission concedes that "Congress . . . expressly recognize[d] the duty of all carriers to protect customer information, and embodie[d] the principle that customers must be able to control information they view as sensitive and personal from use, disclosure, and access by carriers" (paragraph 3, id.). That duty would be enhanced, not hindered, if consumers are empowered to restrict use of their CPNI.

II. PROTECTIONS FOR CARRIER INFORMATION AND ENFORCEMENT MECHANISMS

The Commission opines that section 222 (c) (1) of the Telecommunications Act of 1996 permits the sharing of customer records necessary for the provisioning of service by a competitive carrier, so long as the customer gives oral approval to the competing carrier (paragraphs 84-85, id.). It is in the context of the transfer of information from customer service records ("CSRs") of incumbent local exchange carriers to competing carriers, that the greatest potential for intrusion into consumer privacy exists.

Consequently, all of the Commission's requirements for safeguarding privacy - e.g., with respect to file indicators that flag restricted use (paragraph 175, id.), training of personnel (paragraph 198, id.), internal procedures to handle employees that misuse CPNI contrary to the carriers' stated policy (id.), electronic audits or "footprints" that track access to

CSRs (paragraph 199, id.), supervisory review that ensures compliance with CPNI restrictions when conducting outbound marketing (paragraph 200, id.), and corporate officer certification of compliance (paragraph 201, id.) - should apply with even greater force specifically to the context of sharing CSRs with competitors. The Commission, however, should reconsider its conclusion to not require carriers to restrict access to CPNI, via passwords, physical (locked or otherwise physically restricted) or some other means (see paragraphs 195-96, id.). Otherwise, unauthorized "roaming" through customer records surely will occur. As much as the Commission understandably desires to encourage competition and prevent market control abuses by incumbent local exchange carriers, the most immediate threats to consumers will come from unauthorized or fraudulent business practices. The Commission need look no further than the burgeoning numbers of "slamming" complaints facing state and federal regulators; however, the Commission cannot be unmindful of the experience of regulators with telemarketing generally.

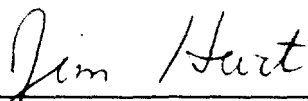
The industry also should take steps to have a means to verify the identify of the customer who is contacted, so that there can be some assurance that the person talked to is, in fact, authorized to grant access to the CPNI. At the same time, privacy interests need to be protected. Other than social security numbers, which about a third of the public are "very" concerned could be misused, there are few other means for carriers to identify customers. A unique account or other identification number may be used for this purpose. The Commission - recognizing the concerns of all carriers in facilitating


competition - should nonetheless direct the industry to create a means to safely and reliably verify approval of access to personal CPNI.

III. CONCLUSION

CUCD applauds the expressed intent of the Commission to use the NPRM to fully examine privacy issues implicated by growing use of CPNI. The Commission should keep in mind that it, with the development of competition, needs to act now to prevent consumer fraud and other abuses. The Commission's role will shift in emphasis from that of fostering the growth of competition to that of protecting consumers from unscrupulous operators. This docket affords the Commission with the opportunity to develop consumer protections that will prevent much of the telemarketing abuses that have plagued other industries from also threatening to derail competition in telephony. If the public loses confidence in the integrity of the industry as a whole, it will demand reform or a return to a regulated industry.

Respectfully submitted,



Jim Hurt
Director 

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Consumers' Utility Counsel Division
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Certificate of Service

This is to certify that on the 26th day of March, 1998, an original and eleven (11) copies of the foregoing were served by express, overnight mail addressed to the Office of the Secretary, FCC, Room 222, 1919 M Street, N.W., Washington, D.C. 20554; that one(1) copy of the foregoing was served by express, overnight mail addressed to Ms. Janice Myles, Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554; and that one (1) copy was mailed by overnight mail to International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20036.

A handwritten signature in cursive script, appearing to read "K Woods", written over a horizontal line.

Kennard B. Woods